

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MARLIN GIOVANNI PICKENS,

Plaintiff,

v.

24 HOUR FITNESS,

Defendants.

Case No. C22-5783 BHS

ORDER TO SHOW CAUSE

This matter comes before the Court on plaintiff's motion for leave to proceed *in forma pauperis* ("IFP") in the filing of a civil rights complaint. Plaintiff is not represented by counsel. Dkt. 1. Considering the deficiencies in the complaint discussed below, the undersigned will not rule on plaintiff's motion for leave to proceed *in forma pauperis* ("IFP") or direct service of the complaint at this time. On or before November 25, 2022, plaintiff must show cause why this cause of action should not be dismissed.

**BACKGROUND**

Plaintiff names 24 Hour Fitness and John Doe, an employee of 24 Hour Fitness, as defendants in this case. Dkt. 1-1, at 7. He alleges that defendants violated his First, Fourth, Fifth, Eighth, Ninth and Thirteenth Amendment rights. *Id.* at 8. He also alleges

1 that defendants defamed his character, breached a contract, and discriminated against  
2 him on the basis of his age, disability, gender, and ableism. *Id.*

3 On September 23, 2022, plaintiff was informed by John Doe, an employee of 24  
4 Hour Fitness, that he was disturbing guests of the gym and should not return to that  
5 gym. *Id.* at 9. John Doe told plaintiff that he would be forced to call the police if plaintiff  
6 refused to leave the gym; because plaintiff did not leave, John Doe called the police. *Id.*  
7 Plaintiff eventually left the gym. Plaintiff alleges that he has not received his personal  
8 items left in the gym locker. Plaintiff seeks \$15 million from defendants in damages. *Id.*  
9 at 13.

## 10 DISCUSSION

11 To state a claim for relief under 42 U.S.C. § 1983, a plaintiff must show: (1) he  
12 suffered a violation of rights protected by the Constitution or created by federal statute,  
13 and (2) the violation was proximately caused by a person acting under color of state  
14 law. *See Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). In addition, to state a  
15 valid § 1983 claim, a plaintiff must allege that he suffered a specific injury as a result of  
16 the conduct of a particular defendant, and he must allege an affirmative link between  
17 the injury and the conduct of that defendant. *Rizzo v. Goode*, 423 U.S. 362, 371-72, 377  
18 (1976).

19 Additionally, Rule 8(a)(2) of the Federal Rules of Civil Procedure “requires a  
20 complaint to include a short and plain statement of the claim showing that the pleader is  
21 entitled to relief, in order to give the defendant fair notice of what the claim is and the  
22 grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554 (2007)  
23 (*citing Conley v. Gibson*, 355 U.S. 41 (1957)). The complaint must include more than  
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1 “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of  
2 a cause of action.” *Twombly*, 550 U.S. at 555-557.

3 In the proposed complaint, plaintiff alleges unnamed employee, “John Doe”, and  
4 24 Hour Fitness violated his constitutional rights by forcing him to leave the gym in  
5 which he had a membership to. With respect to both defendants, generally, private  
6 actors are not acting under color of state law. See *Price v. Hawaii*, 939 F.2d 702, 707–  
7 08 (9th Cir. 1991), and cannot be sued under Section 1983.

8 To determine whether a private actor acts under color of state law for § 1983  
9 purposes, the Court looks to whether the conduct causing the alleged deprivation of  
10 federal rights is “fairly attributable” to the state. *Price*, 939 F.2d at 707–08. Conduct may  
11 be fairly attributable to the state where (1) it results from a governmental policy and (2)  
12 the defendant is someone who fairly may be said to be a governmental actor. *Sutton v.*  
13 *Providence St. Joseph Med. Ctr.*, 192 F.3d 826, 835 (9th Cir. 1999). A private actor may  
14 be considered a governmental actor if the private actor conspires with a state actor or is  
15 jointly engaged with a state actor when undertaking a prohibited action. *Tower v.*  
16 *Glover*, 467 U.S. 914, 920 (1984); *Yesilevsky v. Redmond*, 2020 WL 4370957 (C.D.  
17 Cal. April 1, 2020) (discussing and determining a hospital and its employees were not  
18 state actors).

19 Plaintiff has not alleged that either defendant acted under color of state law.  
20 Thus, based on plaintiff’s proposed complaint, plaintiff has not made any claims against  
21 a proper defendant under Section 1983.

22 Further, even if plaintiff can show that “John Doe” was acting under color of state  
23 law, the use of “John Doe” or “Jane Doe” to identify a defendant is not favored. *Gillespie*  
24 *v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980). Although a plaintiff may be given an  
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1 opportunity after filing a lawsuit to discover the identity of unknown defendants through  
2 discovery, the use of Doe defendants is problematic because those persons cannot be  
3 served with process until they are identified by their real names. If plaintiff chooses to  
4 file an amended complaint, he must provide the names of defendants identified as  
5 “John Doe” and “Jane Doe” in order for the Court to serve (and put on notice) the proper  
6 defendants

7 CONCLUSION

8 Due to the deficiencies described above, the Court will not serve the complaint at  
9 this time. Accordingly, plaintiff is ordered, on or before **November 25, 2022**, to show  
10 cause as to why this Court should not recommend this case be dismissed. If plaintiff  
11 fails to timely respond to this Order to Show Cause, the undersigned will recommend  
12 that plaintiff’s IFP application be denied.

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15 Dated this 9th day of November, 2022.

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18 Theresa L. Fricke  
19 United States Magistrate Judge  
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